

California Department of Consumer Affairs

Legal Guide K-6

CONSUMER TRANSACTIONS WITH STATUTORY CONTRACT CANCELLATION RIGHTS

September 1996

I SPECIFIC STATUTORY CANCELLATION RIGHTS

A number of laws give consumers the right to cancel contracts in specific transactions shortly after the consumer signs the contract. A list of these transactions and the periods allowed for canceling them follows. Note that some cancellation periods are measured in business days.

A consumer-buyer can cancel these contracts for any reason (or for no reason). In order to cancel, the buyer must send the seller written notice of cancellation within the period allowed by statute. (Most cancellation periods begin when the consumer receives written notification of his or her right to cancel.) The buyer must sign and date the cancellation notice, and it must state that the buyer is canceling the contract. The buyer should send the notice to the seller by certified mail return, receipt requested, at the address the seller has given in the sale documents. The buyer should keep a copy of the notice for his or her own records to be able to prove that the notice was given.

Generally, the buyer's notice of cancellation is effective when it is deposited in the mail with the proper address and postage. The buyer should note the exact date, time and place of mailing on the retained copy.

A Automobile Sales and Leases. **There is no statutory cancellation period for automobile sales or leases.**

C Credit Repair Services -- five day cancellation period (CC 1789.16).

D Dance Studio Services -- six month cancellation period (CC 1812.54(b)(1)).

Dating Services -- three business day cancellation period (CC 1694.1).

Dental Services -- three business day cancellation period (CC 1689.3).

Discount Buying Services -- three day cancellation period (CC 1812.118).

Door-to-Door Sales -- three business day cancellation period (CC 1689.5).

EEmployment Counseling Services -- three business day cancellation period (CC 1812.511(a)(6)).

FFuneral Contracts (pre-need) -- indefinite cancellation period (B&P 7737).

HHealth Studio Services -- three business day cancellation period (CC 1812.85(b)).

Home Equity Sale During Foreclosure -- five business day cancellation period (CC 1695.4).

Home Repair or Restoration Contracts Following a Disaster -- seven business day cancellation period (unless contract is automatically void) (CC 1689.6(c)).

Home Security Transactions -- three day cancellation period (12 CFR 226.23).

Home Solicitation Sales -- three business day cancellation period (CC 1689.5).

Home Study or Correspondence Vocational School Courses -- eight business day cancellation period (Ed. Code 94312(d)(1), 94317(a)).

Immigration Consultant Services -- three day cancellation period (B&P 22442(e)).

JJob Listing Services -- three business day cancellation period (CC 1812.516(a)).

Mail/telephone sales (when order has not been filled) - 30 day cancellation period (B&P 17538(a), 16 CFR Part 435).

M Membership Camping Contracts

If buyer visits site -- three business day cancellation period (CC 1812.303).

If buyer does not visit site -- 10 business day cancellation period (CC 1812.304).

Mortgage Foreclosure Consultant Services -- three business day cancellation period (CC 2945.3).

P Personal Emergency Response Unit -- seven business day cancellation period (CC 1689.6(b)).

R Real Estate Transfer -- delayed or materially amended Transfer Disclosure Statement -- three day (statement delivered personally) or five day (statement delivered by mail) cancellation period (CC 1102.3).

S Seller Assisted Marketing Plans -- three business day cancellation period (CC 1812.209).

Seminar Sales -- three business day cancellation period (CC 1689.20).

Service Contracts

For used cars, home appliances, and home electronic products -- 30 day cancellation period (CC 1794.41(a)(4)(A)).

For new motor vehicles -- 60 day cancellation period (CC 1794.41(a)(4)(A)).

For any type of goods, pro-rata refund less penalty -- indefinite cancellation period (CC 1794.41(a)(4)(B)).

Subdivided Land Sales -- 14 day cancellation period (B&P 11028).

T Timeshares -- three day cancellation period (B&P 11024).

U Unlawful Detainer Assistants -- one day cancellation period (B&P 6408(e)).

V Vocational School Courses -- five business day cancellation period (Ed. Code 94317, 94317.5).

W Water Treatment Devices -- three business day cancellation period (B&P 17577.3).

Weight-loss Services -- three business day cancellation period (CC 1694.6).

The consumer may also have other cancellation rights. Almost any consumer contract entered into in a consumer's home (or somewhere other than the seller's place of business) can be canceled by sending a written

notice of cancellation to the seller by midnight of the third business day after the consumer signed the contract.

The contract must be for consumer goods costing \$25 or more. (CC §§ 1689-1689.12.)

A general discussion of other cancellation rights follows.

II GENERAL CONTRACT CANCELLATION RIGHTS

A buyer also may be able to cancel a contract if his or her consent to it was obtained by the seller's fraud or misrepresentation, or if the bargain fails in some major respect through no fault of the buyer. The buyer should contact an attorney or other expert if the buyer thinks that he or she may have one of these grounds for cancelling a contract.

•Rescission for Fraud, Mistake, Undue Influence, Breach, Illegality

- (1) If the buyer's consent to a contract was induced by the seller's fraud, or was given by mistake, or under duress, menace or undue influence, the buyer can elect to rescind the contract (CC 1689(b)).
- (2) A buyer has a right to rescind a contract when the exchange that the buyer anticipated receiving from the seller "fails, in whole or in part, through the fault" of the seller (CC 1689(b)(2)).
- (3) The buyer has a right to rescind a contract when the exchange the seller promised to the buyer "becomes entirely void from any cause" (CC 1689(b)(3)).
- (4) The buyer has a right to rescind a contract when the exchange which the buyer bargained to receive from the seller "fails in a material respect from any cause" before it is rendered to the buyer (CC 1689(b)(4)).
- (5) The buyer has a right to rescind a contract when the contract "is unlawful for causes which do not appear in its terms or conditions, and the parties are not equally at fault" (CC 1689(b)(5)).
- (6) The buyer has a right to rescind a contract if "the public interest will be prejudiced by permitting the contract to stand" (CC 1689(b)(6)).
- (7) A procedure for exercising the right to rescind (which includes a notice of rescission to the other party) is established by law (CC 1691-1693).

(8) The provisions on rescission, at CC 1689-1693, also apply when the right to rescind is conferred under another statute (CC 1689(b)(7)).

- **California Unconscionability Law**

(1) A court has the power to refuse to enforce a contract or a clause in a contract that is unconscionable when made (CC 1670.5(a), 1770(s)).

(2) To enable the court to decide whether a contract or clause is unconscionable, the parties may present evidence of the setting, purpose and effect of the contract (CC 1670.5(b)).

III

CANCELLATION FOR BREACH OF WARRANTY

- **Rejection.** Buyer may reject a non-conforming product, and, if the seller does not cure the breach, buyer may cancel the purchase (Com. Code 2601, 2711(1)).

- **Revocation of Acceptance.** Buyer may revoke acceptance of accepted goods, if they substantially fail to conform to the contract, and may cancel the purchase (Com. Code 2608, 2711(1)).

- **Lemon Law.** If a warranted product cannot

the warrantor must either replace the defective product or reimburse its price, less the amount attributable to use (CC 1793.2(d)).

Guide to Abbreviations:

CC = Civil Code

B&P = Business and Professions Code

Ed. Code = Educational Code

CFR = Code of Federal Regulations

Com. Code = Commercial Code

NOTICE: We attempt to make our legal guides accurate as of the date of publication, but they are only guidelines and not definitive statements of the law. Questions about the law's application to particular cases should be directed to a specialist.

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be repaired after a reasonable number of repair attempts,